1. S.B. Criminal Revision Petition NO.358/2006
(Mahaveer Prasad Vs. State)

2. S.B. Criminal Revision Petition NO.359/2006
(Mahaveer Prasad Vs. State)

3. S.B. Criminal Revision Petition NO.360/2006
(Mahaveer Prasad Vs. State)

4. S.B. Criminal Revision Petition NO.361/2006
(Mahaveer Prasad Vs. State)

Date of order : 23.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. R.K. Charan, for the petitioner.
Mr. Ashok Upadhyay, Public Prosecutor.

Heard learned counsel for the petitioner.

In all the above four revision petitions, the petitioner has challenged the order dated 22.3.2006 passed by Additional Sessions Judge, Deedwana in Criminal Appeal Nos.48/02, 46/02, 49/02 and 47/02 respectively whereby all these four appeals were decided in absence of the petitioner.

It is contended by the learned counsel for the petitioner that the above four appeals were listed before Additional Sessions Judge, Deedwana on 7.3.2006. On that date, the petitioner was absent and his counsel moved an application for exemption of his personal attendance stating therein that due to serious illness of his brother, he is unable to attend the Court. However, the learned Additional Sessions

Judge, Deedwana refused the said prayer and forfeited the bail bonds of the petitioner and passed an order for initiation of proceedings under Section 446 Cr.P.C. in each appeals separately and issued warrant of arrest. Further, it was ordered that the case may be listed for judgment on 22.3.2006. On that date, the learned Appellate Court has decided all the appeals without hearing the petitioner. Therefore, the impugned judgment dated 22.3.2006 is erroneous.

It is contended by the learned counsel for the petitioner that the petitioner's application for exemption of personal attendance was required to be accepted and the appeals were to be heard and decided finally after providing opportunity of hearing to the petitioner. Therefore, the Appellate Court has committed an error while deciding the appeals in absence of the petitioner. Hence, it is prayed that the order dated 7.3.2006 as well as the judgment dated 22.3.2006 passed by Appellate Court may kindly be quashed and set aside.

In support of his contention, learned counsel for the petitioner has invited the attention of this Court towards the judgment rendered by Hon'ble Supreme Court in case of Satbir Vs. State of Haryana, reported in 2006 (2) WLC (SC) 312 wherein the Hon'ble Supreme Court has observed that legal assistance was to be given to the accused for arguing his matter on merit

and in absence of counsel, the matter was not to be decided when accused was in Jail. Obviously, it is the verdict of Hon'ble Supreme Court that reasonable opportunity to argue the case is required to be given while deciding the criminal cases and no matter can be decided on merit without hearing the accused on any count.

Learned counsel for the petitioner has also invited the attention of this Court towards another judgment rendered by this Court (Jaipur Bench) in case of Ganga Singh Vs. State, reported in 1996 (1) RCD 423 (Raj) wherein the learned Single Judge has held that the decision in absence of the party and his counsel is illegal and while quashing the proceedings remanded the matter to the trial court for deciding the matter afresh after providing opportunity of hearing.

I have perused the order-sheet dated 7.3.2006 as well as the impugned judgment dated 22.3.2006 as well as the judgments cited by the learned counsel for the petitioner.

It is true that the appeals were pending before the trial court since 2002 and the appellant filed an application on 7.3.2006 for exemption of personal attendance. However, the Appellate Court rejected the prayer for exemption of personal attendance and without providing an opportunity to

argue the case, the order has been passed for pronouncement of judgment on 22.3.2006. On 22.3.2006, the judgment was pronounced whereby the Appellate Court has upheld the conviction and sentence awarded by the trial court vide its judgment dated 5.8.2002. In my opinion, the Appellate Court was under obligation to grant exemption from personal attendance to the petitioner, because the reason for non-appearance of the petitioner was serious illness of his brother. No cogent reasons were given by Appellate Court while rejecting the application for exemption and further, the Appellate Court has committed an error while deciding the case without hearing the appellant in his absence.

In this view of the matter, the impugned judgment dated 22.3.2006 passed in appeal is hereby set aside as the same has been passed without providing hearing to the petitioner in his absence. The case is remanded to the Appellate Court for deciding the matter afresh after providing opportunity of hearing to the petitioner within a period of three months from the date of receipt of certified copy of this order. The petitioner is also directed to remain present before the Additional District & Sessions Judge, Deedwana on 12.7.2007. It is further ordered that upon appearing the petitioner before the Additional District & Sessions Judge, Deedwana, the petitioner shall furnish fresh bail bonds in the sum

of Rs.5000/- with one surety of like amount. The Appellate Court is further directed that in the event of depositing Rs.5000/- by the petitioner in all the four appeals, the proceedings initiated under Section 446 Cr.P.C., shall be dropped as against the petitioner and his surety in each of the appeals. Record of the trial court may be sent forthwith.

With these directions, all the four revision are disposed of.

(GOPAL KRISHAN VYAS), J .

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